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## State of South Carolina State Ethics Commission

February - March 1995

NEWSLETTER

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APR 4 1995

95-005

### CORRECTION

In the January 1995 newsletter, an article showed the major party candidate expenditures in the 1994 elections. Tom Trantham was listed as the Democratic candidate, however, Tracy Childers was the general election candidate for the Commissioner of Agriculture. He spent \$49,098.

### Deadlines

April 10 Campaign Disclosure Quarterly Report Due  
April 10 Lobbyist and Lobbyist's Principal Disclosure  
Report Due  
April 17 Statement of Economic Interests annual update  
due

### H4070

In the last newsletter, a brief summary of provisions of H4070 was provided. Kelly J. Golden, Legal Counsel for the State Ethics Commission has prepared the following more-extensive summary. Please contact this office if you have any questions regarding the implementation of these changes. Copies of the revised Ethics Reform Act are available from the Commission office for \$2.50 each.

### 1995 AMENDMENTS TO THE ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM ACT

Kelly J. Golden  
Legal Counsel to the State Ethics Commission

The Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code §2-17-5 et seq. (Supp. 1993) and S.C. Code §8-12-100 et seq. (Supp. 1993) was amended by Act. No 6, 1995 S.C. Acts \_\_\_\_\_. The Amendments are, for the most part, effective January 12, 1995, except Section 24, which takes effect July 1, 1995. Any changes in reporting

requirements pursuant to the provisions of this act shall apply only to transactions occurring on or after January 1, 1995. Act No. 6, 1995 S.C. Acts \_\_\_, Section 47. Because the Acts and Joint Resolutions have not been published as of the time of this writing, citations are made to the Section numbers of House Bill No. 4070 bearing Ratification No. 580. The Act took effect without the Governor's signature on January 12, 1995.

S.C. Code §2-17-10 et seq. (Supp. 1993) relating to Lobbyists and Lobbying did not include a definition of official capacity. Since a public official or public employee acting in an "official capacity" is prohibited from accepting anything of value from a lobbyist's principal in return for speaking before a public or private group, the addition of a definition clarifies the obligations imposed on the official or employee. Official capacity means activities which (a) arise because of the position held by the public official or employee; (b) involve matters which fall within the official responsibility of the agency, the public official, or employee; and (c) are services the agency would normally provide and for which the official or employee would be subject to expense reimbursement by the agency with which he is associated. Section 1.

S.C. Code §2-17-10 (14) (Supp. 1993) was amended to add to the definition of lobbyist's principal that "A person is considered a lobbyist's principal only as to the public office or public body to which he has authorized, pursuant to this chapter, a lobbyist to engage in lobbying." Section 2

S.C. Code §2-17-20 (Supp. 1993) was amended to provide that the lobbyist's registration must contain an identification of the public office or public body which the lobbyist will engage in lobbying and the subject matter of such lobbying. If a lobbyist fails to identify the public office or public body for which he is authorized to engage in lobbying then the lobbyist's



principal for whom the lobbyist is authorized to engage in lobbying is deemed a lobbyist principal as to all public offices or public bodies of the State. Sections 3, 4 & 5.

Similarly, S.C. Code §2-17-25 (Supp. 1993) was amended to provide that if the lobbyist's principal fails to identify the public office or public body for which he has authorized lobbying, then the lobbyist's principal is deemed a lobbyist's principal as to all public offices or public bodies of the State. Section 6.

The time for filing reports for lobbyists and their activities, S.C. Code §2-17-30 (Supp. 1993), was changed to require reporting no later than April 10th and October 10th of each year, rather than the first of April and October. The filing periods are defined to be from January 1 to March 31 for the April 10th report and April 1 through September 30th for the October report. Any lobbying activity not reflected on the October 10th report and not reported on a statement of termination must be reported no later than December 31 of that year. A similar provision was adopted in S.C. Code §2-17-35 (Supp. 1993) for reporting expenditures attributable to lobbying by lobbyist's principals. Sections 7, 8.

S.C. Code §2-17-65(C) as amended, vests the Ethics Commission, rather than the Attorney General, with jurisdiction to file a complaint against a person who fails to file required notices and reports. Section 9. S.C. Code §2-17-70 (Supp. 1993) which required the Attorney General to make preliminary investigations was repealed.

Under an amendment to S.C. Code §2-17-90 (Supp. 1993), a public official or public employee is not prohibited from accepting lodging, transportation, entertainment, meals, food, or beverages at a function if the face value of a ticket is paid to attend the ticketed event sponsored by a lobbyist's principal when the ticketed event is open to the public. Section 11.

A new paragraph was added to S.C. Code §2-17-90 to provide that a public official or public employee may accept lodging, transportation, entertainment, food, meals, beverages, or an invitation to a function paid for by a lobbyist's principal if it is provided for the public official or public employee solely on the basis that the spouse of the public official or public employee is an official or an employee of the providing lobbyist's principal and the spouse is receiving the lodging, etc. clearly incidental to the spouse's office or employment with the lobbyist's principal and the public official or employee is receiving it only as the spouse of an official or employee of the providing lobbyist's principal. Section 12.

The provisions for speaking engagements were also clarified so to allow a public official or employee to accept a meal provided in conjunction with a speaking engagement where all participants are entitled to the same meal and the meal is incidental to the speaking engagement. Section 13.

A public employee may receive payment or reimbursement for actual expenses incurred in a speaking engagement. The expenses must be reasonable and incurred in a reasonable time and manner to accomplish the purposes of the speaking engagement. A public official or employee required to file a Statement of Economic Interest under S.C. Code §8-13-1110 must report the organization which paid or reimbursed the actual and reasonable expenses associated with a speaking engagement along with the amount of payment or reimbursement and the purpose, date, and location of the speaking engagement. A public official or employee who is not required to file a SEI but who is paid or reimbursed actual expenses for a speaking engagement must report the information in writing to the chief administrative official or employee of the agency with whom the official or employee is associated. Section 13.

Section 13 also requires a public official or employee who incurs expenses involving a speaking engagement out of state to receive prior written approval for payment or reimbursement from the chief executive of a department of the State or any state board, commission, agency or authority including committees of such a body.

The term "Candidate" was broadened to include a "person on whose behalf write-in votes are solicited if the person has knowledge of such solicitation". It included "a ballot measure" within the term "Election" and included a definition for "Official Capacity" like that discussed above. It defined "State board, commission or council" as an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign powers of the State." Sections 14, 15, 16, & 17.

Any person charged with a violation of the Ethics Reform Act is entitled to the administrative hearing process. Section 18.

The State Ethics Commission is empowered to issue subpoenas upon approval of the Chairman, rather than a majority of the Commission. Section 19

S.C. Code §8-13-235 was adopted to permit the Commission to retain fees generated by the registration of lobbyists and lobbyist's principals. Section 20

Public officials, members, or employees, when



speaking before a public or private group may accept a meal in conjunction with a speaking engagement but must also report on their SEI the organization which paid for or reimbursed actual expenses, and the purpose, date, and location of the speaking engagement. If the official, member or employee does not file a SEI, he must make a report to the chief administrative official or employee of the agency with whom he is associated. Section 21.

The prohibition against representation of another by a public official, member or employee before a governmental unit was narrowed by the inclusion of the words "for which the public official, public member, or public employee has official responsibility ...". Thus, the sweeping prohibition against representing a person before any agency, unit or subunit of a county or municipality is narrowed to restrict the official, member or employee from representing a person before an entity in an area in which the official, member or employee has "official responsibility". Section 22.

In the same vein, a public employee's prohibition against representation is restricted to an entity on the same level of government "for which the public official, member or employee has official responsibility". Section 23. A companion amendment makes the identical change but changes the designation of South Carolina Insurance Commission to the South Carolina Department of Insurance. Section 24.

The bar against a public official, member or employee having an economic interest in a contract with the State or a political subdivision, S.C. Code §8-13-775 (Supp. 1993), was amended to provide that the section does not "prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official, public member, or public employee has not performed an official function regarding the contract." Section 25.

The legislature deleted the words "in writing" from S.C. Code §8-13-785 thereby permitting oral communication with boards and commission members on behalf of constituents. Section 26.

Consultants were deleted from the list of persons required to file a SEI. Consultants will file a form disclosing their interests in the business entity receiving a contract. Sections 27 & 32

The information required in an SEI is amended so to combine provisions concerning disclosure of the sale, lease or rental of real and personal property to a state, county, or municipal instrumentality. It also includes

provisions to require the name of each organization which paid for or reimbursed actual expenses of the filer for speaking engagements along with the amount of the payment and purpose, date and location of the engagement. Disclosure of creditors is required only if the creditor is subject to regulation by the filer or is seeking or has sought a business or financial arrangement with the filer's agency or department. Sections 28 & 29.

A new provision was added at S.C. Code §8-13-1125 to exclude from the required SEI reporting requirement "an event to which a member of the General Assembly is invited by a lobbyist's principal, regardless or whether or not the member attended the event, if the invitation was extended to the entire membership of the House, Senate, or General Assembly, and the invitation was accepted by the House or Senate Invitations Committee.

S.C. Code §8-13-1127 was also adopted to provide that House and Senate Invitations Committees keep a list of invitations which are accepted. The list is public information. Sections 30 & 31.

At S.C. Code §8-13-1150 the time for forwarding copies of SEI's to the Ethics Commission by the Senate and House of Representatives Ethics Committees was changed from 2 to 5 days. Also, the time for forwarding the filed copies of SEIs to the County Clerks of Court was changed from 2 to 5 days. Section 33

The term "Candidate" was amended in the campaign practices definitions to include a person on whose behalf write-in votes are solicited. The definition of "contribution" was amended to delete a reference to ballot measures but to provide that "election" also means a ballot measure. In the definition of "independent expenditure" an expenditure made by a person to advocate an election or defeat of a ballot measure was added while the definition of "noncandidate committee" deleted a reference to ballot measure. Sections 32, 33, 34, 35, 36, 37, 38.

S.C. Code Section 8-13-1308 was amended to allow pre-election and quarterly reports to be combined if due within the same thirty day period so that the combined report is due no later than fifteen days before the election. The time to forward reports to the Commission is increased to five days as is the time for forwarding filed reports to the Clerks of Court. Sections 39, 40 & 41.

S.C. Code §8-13-1346 prohibiting the use of public funds to influence the outcome of an election was amended to include the proviso that the section "does not prohibit the expenditure of public resources by a



## ADVISORY OPINIONS

governmental entity to prepare informational materials, conduct public meetings, or respond to news media or citizens' inquiries concerning a ballot measure affecting that governmental entity; however, a governmental entity may not use public funds, property, or time in an attempt to influence the outcome of a ballot measure. " Section 42.

Section 43 relating to identification of a person independently paying for an election-related communication is amended so to apply the section to all candidates, committees or other persons making an expenditure for a communication rather than just an independent expenditure.

Section 44 changes the time in which to transmit candidates' Statement of Economic Interests forms by election officials to no later than 5 business days after the candidacy books close.

The failure to file a report or statement with the appropriate supervisory office, as required under the provisions of the Chapter, is deemed to have occurred in Richland County. Section 44.

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time Act 6 takes effect are saved. The act may not be construed to affect any prosecution pending or begun before the effective date of the Act. Section 45.

**State Ethics Commission**

P.O. BOX 11926  
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**SEC AO95-009**

**MARCH 15, 1995**

### **ECONOMIC DEVELOPMENT EMPLOYEE RECEIVING BENEFITS**

A public employee whose duties involve economic development may not accept anything of value if there are matters requiring action by the employee's office or requiring the employee's advice or recommendations which involve the economic interest of a potential corporate resident.

**SEC AO95-010**

**MARCH 15, 1995**

### **COUNTY COUNCIL MEMBER/FIRE CHIEF VOTING ON ISSUES AFFECTING FIRE SERVICE**

A County Council Member should abstain from voting on matters in which he has an economic interest. When a County Council issue arises involving the member's economic interest, the member must prepare the required report.

**SEC AO95-011**

**MARCH 15, 1995**

### **SHERIFF'S DEPUTIES RECEIVING FOOTBALL TICKETS**

The State Ethics Commission would advise that complimentary tickets to a football game given to Sheriff's Deputies in appreciation for previous work provided are prohibited only if given to influence the officers in the conduct of their official responsibilities.

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